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THE SITUATION IN CENTRAL AMERICA: PROCEDURES FOR THE ESTABLISHMENT OF A FIRM AND LASTING PEACE AND PROGRESS IN FASHIONING A REGION OF PEACE, FREEDOM, DEMOCRACY AND DEVELOPMENT

Note by the Secretary-General

1. The present document contains the first report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), created pursuant to General Assembly resolution 48/267 of 19 September 1994. MINUGUA was established with the mandate to verify implementation of the Comprehensive Agreement on Human Rights, signed by the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) at Mexico City on 29 March 1994 (A/48/928-S/1994/448, annex I).

2. The report was prepared following the first three months of MINUGUA's operation. It presents valuable information on the background to the Mission, its launching and deployment, the context in which it is operating, a description of the activities carried out by the Mission, including references to the most important cases so far considered, and preliminary conclusions regarding the human rights situation in Guatemala. I have transmitted a copy of the report to the United Nations High Commissioner for Human Rights with a request that it be brought to the attention of the members of the United Nations Commission on Human Rights.

3. I am grateful to the Group of Friends of the Guatemalan peace process for their ongoing support for the United Nations efforts, to the Governments of Brazil, Colombia and Spain for having made their police officers available for service in the Mission, and to the Governments of Brazil, Spain and Sweden for having offered the services of their military officials to provide liaison with the military leaders of the two parties in order to facilitate MINUGUA's complex tasks.

4. I should also like to thank the Government of Guatemala and URNG, whose support and cooperation have been central to MINUGUA's verification work. The readiness of both parties to respect the commitments undertaken in the Comprehensive Agreement will, I am convinced, permit a substantial improvement of the human rights situation in the country. In addition, success in this area can be expected to contribute positively to the negotiating process aimed at achieving a firm and lasting peace in Guatemala.

ANNEX

Report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala

I. INTRODUCTION

1. The United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) was established within the framework of the ongoing negotiating process between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) being conducted under the auspices of the Secretary-General. Following the resumption of the negotiating process, suspended since May 1993, on 29 March 1994, the parties signed the Comprehensive Agreement on Human Rights (A/48/928-S/1994/448, annex I), in which they asked the Secretary-General to establish a mission for the verification of human rights and of compliance with the commitments of the Agreement. The mission would be a component of the overall verification of a firm and lasting peace agreement, which the parties undertook to sign under the provisions of the Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (A/49/61-S/1994/53, annex).

2. In the Comprehensive Agreement on Human Rights (hereinafter referred to as "the Agreement"), the parties requested that, in verifying human rights, the United Nations mission should receive, consider and follow up complaints of possible human rights violations; establish whether the competent national institutions had carried out the necessary investigations autonomously, effectively and in accordance with Guatemalan and international human rights norms; and determine whether or not a violation had occurred. In verifying the other commitments set forth in the Agreement, the mission would determine whether they were being fully implemented by the parties. The mission would make recommendations to the parties, in particular regarding measures necessary to promote full observance of human rights and faithful implementation of the Agreement. The mission's activities would relate to events and situations subsequent to its installation.

3. The parties further requested that the mission be empowered to establish itself and move freely throughout Guatemala, conduct interviews freely and privately; visit State premises and URNG camps freely and without prior notice; and collect information that might be relevant for the implementation of its mandate. The Agreement also empowered the mission to cooperate with national institutions and entities for the effective protection and promotion of human rights; sponsor technical cooperation programmes and carry out institution-building activities; offer its support to the judiciary and its auxiliary organs, the Public Prosecutor's Office (Ministerio Público), the Counsel for Human Rights (Procurador de los Derechos Humanos) and the Presidential Human Rights Committee (Comisión Presidencial para los Derechos Humanos (COPREDEH)); promote international technical and financial cooperation to strengthen the

Office of the Counsel for Human Rights and other national institutions and entities; and contribute, in cooperation with the State and various bodies of society, to encouraging a culture of respect for human rights.

4. In response to the parties' request, the Secretary-General sent a preliminary mission to Guatemala and Mexico (24 April-7 May 1994) in order to assess the specific requirements for the establishment of a mission. Based on its findings, which, inter alia, were that the conditions existed for a human rights verification mission to begin its activities even prior to a cease-fire, the Secretary-General, in his report to the General Assembly of 18 August 1994 (A/48/985), recommended that the Assembly authorize the establishment of MINUGUA.

5. The General Assembly, in its resolution 48/267 of 19 September 1994, decided to establish MINUGUA for an initial period of six months and requested the Secretary-General to keep it fully informed of the implementation of its resolution. On the same day, the Secretary-General appointed Mr. Leonardo Franco Director of the Mission. A day later, a technical advance team was dispatched to Guatemala in order to carry out all the necessary substantive and logistical activities for the expeditious deployment of the Mission. In addition to establishing contacts with the Government, State institutions, non-governmental organizations and other sectors of Guatemalan society, the team drafted a handbook on methods for the verification of human rights in Guatemala, to be used by international observers, and a set of guidelines for MINUGUA staff. The team also designed and organized training seminars, which were later given to incoming members of the Mission.

II. LAUNCHING AND DEPLOYMENT OF THE MISSION

6. On 21 November 1994, agreement having been reached between the United Nations and the Government of Guatemala on the status of mission of MINUGUA, the work of the technical advance team concluded and the Mission formally opened its doors to the Guatemalan public. Following an exchange of letters between the Secretary-General and the Minister for Foreign Affairs, the status-of-mission agreement was approved by the Guatemalan Congress in December 1994 and passed into law in January 1995. It grants MINUGUA all the powers provided for in the Agreement, determines the Mission's legal status and defines the privileges and immunities of its members and property.

7. Two days after MINUGUA's formal installation, on 23 November, the Mission inaugurated its first regional office, at Guatemala City (see appendix I). Although that office was to provide human rights verification only in the southern central area of the country, it was stressed that, until the remaining offices were opened, it would accept complaints and follow cases from all other regions.

8. The structure of MINUGUA (see appendix II) follows the recommendations of the preliminary mission as set out in the Secretary-General's report (A/48/985). By 21 February, a total of 211 international staff members from 36 countries had joined the Mission, comprising 111 substantive staff, of whom 72 are United Nations Volunteers, 60 administrative and logistical support staff, 10 military

liaison officers and 30 civilian police observers. In addition, MINUGUA has 67 local staff. Women comprise 39 per cent of the total staff and head more than half of the regional offices. The Mission is close to attaining its authorized strength of 245 international staff; nevertheless, it is a matter for concern that the human rights verification teams are having to operate with only half of the authorized police observers, 30 of whom are yet to be provided by Member States.

9. As the preliminary mission pointed out, MINUGUA's success depends to a large extent on its full deployment, since topography, distances and the inadequate road system make travel difficult in many areas of Guatemala. In addition, that deployment must take into account the location of the most vulnerable groups and the population directly affected by the armed confrontation (including displaced persons, refugees and returnees). For these reasons, as soon as the minimum logistical and personnel requirements were met, MINUGUA opened regional offices at Santa Cruz del Quiché (5 December), Huehuetenango (16 December), Cobán (21 December), Quetzaltenango (11 January), Sololá (19 January), Zacapa (23 January) and Santa Elena (26 January). Sub-offices were established in Cantabal (17 January), Nebaj (6 February), Barillas (14 February), San Marcos (21 February) and Escuintla (28 February).

10. While the support offered by the Government greatly facilitated the rapid deployment of MINUGUA in the field, several offices (Cobán, Santa Elena, Sololá, Barillas and Nebaj) have still not obtained telephone/fax lines. It is hoped that the Government will provide these facilities urgently, given their crucial importance to the work of the Mission.

11. MINUGUA's presence - even in the most remote areas of the country - allowed for the early establishment of working relations with local civilian authorities, representatives of the army and the police, auxiliary offices of the Counsel for Human Rights, churches, indigenous communities, non-governmental organizations and other sectors of society. It is also serving to focus public attention on the parties' commitments under the Agreement.

12. As stipulated in the Agreement, the Mission has established working arrangements with both parties for the regular discussion of specific aspects related to their compliance with their respective commitments. The Director of the Mission meets frequently with the President of the Republic and with COPREDEH in Guatemala City, and with the leadership of URNG in Mexico City. The Mission uses those meetings to transmit and follow up on cases of alleged human rights violations that have been brought to its attention.

13. In addition to a pledge of full support to the Mission in its work, the Agreement contains an undertaking by the Government of Guatemala and URNG to ensure the security of the members of MINUGUA, as well as of those presenting complaints and giving testimony to the Mission. Furthermore, given that verification tasks are being carried out while military operations continue, in compliance with the Agreement, MINUGUA signed agreements on security arrangements with URNG and the Government on 6 and 23 January 1995, respectively.

III. CONTEXT IN WHICH THE MISSION IS OPERATING

14. Following its visit to Guatemala in April/May 1994, the preliminary mission pointed out that, notwithstanding positive efforts made by the Government of President Ramiro de León Carpio, the human rights situation in Guatemala was still very troubling. This same concern is reflected in recent reports covering 1994 issued by the United Nations Independent Expert, 1/ the Inter-American Commission on Human Rights, the Counsel for Human Rights and the Archdiocesan Human Rights Office. It appears clear that, despite certain recent institutional improvements, there remain a number of long-standing structural elements that severely limit the adequate protection of human rights. The most significant deficiencies are described briefly in the following paragraphs.

15. The political history of Guatemala and more than 30 years of armed confrontation have resulted in the existence of a pervasive climate of violence in which State institutions, especially those responsible for the administration of justice and public security, are widely perceived as ineffective. The army has been entrusted with a disproportionate role in the social, economic and political life of the country. The absence of State institutions in vast areas of rural Guatemala contrasts with the presence of the military commissioners (the representatives of the army in the communities) and of Voluntary Civil Defence Committees (CVDC), described by the Counsel for Human Rights in his report of 1994 as "paramilitary organizations subordinate to the military authorities ... which have served to instil fear and anxiety in the communities where they operate".

16. The main institution officially entrusted with the maintenance of public security is the National Police, which, according to a December 1994 study carried out by a Multinational Commission on Public Security, 2/ is seriously lacking in human and material resources, and is involved chiefly in administrative and protection functions in urban areas. There are indications that civil society is generally fearful and mistrustful of the National Police owing to its record of inefficiency, corruption and disrespect for human rights. In December 1994, the then Minister of the Interior stated that 10,000 arrest warrants issued by the courts were still pending action by the National Police. Thus, in a context of waves of violent crimes, generalized impunity and widespread possession of unregistered firearms, there is a tendency in many sectors of Guatemalan society to take matters of security and justice into one's own hands.

17. With respect to social and economic conditions, the governmental General Secretariat for Planning (Secretaría General de Planificación, SEGEPLAN) estimates that 75 per cent of Guatemalan families live in conditions of poverty; 37.4 per cent of the population are affected by malnutrition; the infant mortality rate is 54 per 1,000 live births; and half of the population over 15 years of age is illiterate. All of the above indicators tend to rise sharply when referred to rural areas. The mandated minimum wage is rarely paid. Poverty is especially extreme among the indigenous communities, which make up approximately 60 per cent of Guatemala's population and which remain largely outside the country's political, social and economic mainstream. This long-standing marginalization has made the indigenous population the most

vulnerable sector of Guatemalan society and the principal victim of human rights violations.

18. The long-standing problem of land tenure and usage is also a serious destabilizing factor in Guatemala. The occupation of lands by farm workers is on the rise, as are protests against labour conditions and non-compliance with minimum-wage laws. These occupations tend to lead to forced evictions, which are in themselves a further source of social instability and violence. Especially vulnerable to the problem of land are the refugee, returnee and displaced populations. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), over 20,000 refugees have returned to Guatemala since 1984, while 44,000 remain in neighbouring Mexico. In many cases the returnees, often devoid of personal documents, face serious difficulties when they attempt to resettle on their own property or to buy land.

19. To date, the State has been hindered in its attempts to resolve many of the grave social problems outlined above by a number of difficulties, among them its inability to obtain and administer financial resources. Currently, tax revenues in Guatemala represent only 8 per cent of GDP - one of the lowest percentages in Latin America - while corporate and individual tax evasion is over 50 per cent. In December 1994, the Government finally succeeded in obtaining congressional approval of a package of fiscal reforms that will enter into force at the beginning of 1996 aimed at raising taxes and sanctioning evaders.

20. The institutional crisis brought about by former President Jorge Serrano's attempt to seize full powers in May 1993 began to be resolved a month later, with the designation of current President de León Carpio, who at that time held the post of Counsel for Human Rights. In January 1994, a referendum on constitutional reforms allowed for the election of a new Congress in August 1994 and the election by Congress of a new Supreme Court in October 1994. Despite the fact that the January and August elections were characterized by a high abstention rate (90 and 78.9 per cent, respectively), they resolved the crisis and paved the way for further reforms and improvements. None the less, State institutions and other bodies of civil society remain very weak and largely hampered in their efforts to solve the acute national problems they have inherited. Thus, human rights verification must be set in the context of wider efforts to end the armed conflict, promote the rule of law, strengthen the democratic process and encourage development.

IV. VERIFICATION OF RESPECT FOR HUMAN RIGHTS AND OF FULFILMENT OF OTHER COMMITMENTS MADE IN THE COMPREHENSIVE AGREEMENT

Commitment I. General commitment regarding human rights

21. This commitment has two elements. The first, which includes the Government's adherence to the principles and norms designed to guarantee and protect the full observance of human rights, will be examined by means of verification of the rights to which the Agreement gives priority (paras. 24-86). The second, which concerns the encouragement which the Government must give to all those measures designed to promote and perfect norms and mechanisms for the protection of human rights, warrants the following comments.

22. Fulfilment of this second part of Commitment I is closely linked to the fulfilment of other commitments set forth in the Agreement. Political will and the adoption of measures such as the purification of State agencies, constitutional and legal reforms, the reorganization of the National Police and the strengthening of basic institutions such as the Office of the Counsel for Human Rights, the Public Prosecutor's Office and the judiciary, are aspects that must serve as a basis for evaluating the Government's fulfilment of this obligation.

23. The presence of MINUGUA in the country, as a mechanism for verifying observance of human rights, and the gestures of support received from the Government, such as its help in ensuring the adoption by Congress of the status-of-mission agreement, the facilities extended for the installation of MINUGUA, the periodic meetings with the President of the Republic and the relationship with the Presidential Human Rights Committee (COPREDEH), are all expressions of fulfilment of this commitment.

Analysis of verification of the rights accorded priority under the Comprehensive Agreement

24. In the Agreement, the parties agree that they understand human rights as meaning those rights which are recognized in the Guatemalan legal order, including international treaties, conventions and other instruments on the subject to which Guatemala is a party. They specify that, in verifying the observance of human rights, the Mission shall pay particular attention to the rights to life, to integrity and security of person, to individual liberty, to due process, to freedom of expression, to freedom of movement, to freedom of association and to political rights.

25. One of the basic principles mentioned in the Mission's verification handbook is the guarantee of confidentiality. All persons or organizations that file complaints with the Mission decide whether their personal data or any other information they provide shall be kept secret. During the verification process, the affected parties are directly informed of the action taken - a function different from that performed by the present report - and are encouraged to go to the competent State organs to request investigation of the case.

26. Of the complaints received, only those that meet the requirements established in the verification handbook and that have undergone preliminary verification are admitted and registered. Subsequently, the verification teams of the regional offices, composed of civilian and police human rights observers, exercising the powers conferred on the Mission, travel throughout the territory to interview victims, relatives, witnesses, alleged perpetrators, State authorities or URNG leaders; visit State offices or URNG camps without having to give prior notice; and gather all relevant information in order to be able to determine the veracity of the complaint and whether the violation occurred. At the same time, the Mission verifies that the complaint is being investigated effectively and independently by State agencies, to which end cooperation and follow-up arrangements are maintained with the Office of the Counsel for Human Rights, the judiciary, the Public Prosecutor's Office and the security forces.

27. During the period between 21 November 1994 and 21 February 1995, MINUGUA received around 1,000 complaints, of which 288 were admitted for verification because they affected specific commitments made or rights accorded priority under the Agreement (see tables 1 and 2). The results of the verification carried out thus far give a preliminary idea of the situation of those rights. The conclusions in this report are not based on statistics from all the complaints received, but on a selected group of such complaints. The selection of illustrative cases summarized in this section, although for the most part still in the process of verification, reveal a pattern of violations that makes them highly credible.

1. Right to life

28. During the period covered by this report, 100 complaints of violations of the right to life were admitted, involving deaths as a result of the violation of legal guarantees and extrajudicial executions (22), attempted executions (10) and death threats (68). The Mission is concerned that the largest number of complaints admitted - almost 35 per cent of the total - refer to alleged violations of the right to life.

29. On the basis of the obligations deriving from treaties binding on Guatemala and taking the position adopted unanimously by various organs of the United Nations and the inter-American system in the area of human rights, this section covers complaints of violations of the right to life as a result of the State's failure to provide guarantees. The complaints involve violations of this right in which State agents are not necessarily implicated directly but for which, whether by act or omission, the State bears responsibility because it failed repeatedly in its duty to prevent, investigate, bring to trial and punish such violations.

30. The complaints admitted and verified on a preliminary basis continue a pre-existing pattern of such violations, with similar characteristics as regards the background of the victims, the nature of the deaths and the participation of State agents, whether the latter were the direct perpetrators, instigated or consented to the violations or acted as accessories by failing to investigate the alleged violation and even by losing basic evidence. The method followed is that these facts are verified and, where appropriate, a final determination is made that the violation occurred, indicating the corresponding category. It is up to the State, through the competent agencies, to investigate the violation effectively and independently to determine whether the allegation that its agents were responsible is founded.

31. In some cases, the complaints and, on a number of occasions, the preliminary evidence uncovered during verification point to the responsibility of members of the police, the army or persons under its control, such as military commissioners and members of the Voluntary Civil Defence Committees (CVDCs), also known by their earlier name of Civilian Self-Defence Patrols (PACs). The perpetrators have often not been identified, but the way in which the events occurred and the characteristics of the victims make it possible to assume that the cases were politically motivated.

(a) Extrajudicial executions and deaths in violation of legal guarantees

32. Some of the complaints admitted are summarized below as examples, indicating that the principal victims include members of popular and human rights organizations, priests, union leaders and university staff and students.

Case 1

33. On 28 November 1994, Manuel Nix Morales and Gaspar Chumil Chumil, members of the "Runujel Junam" Council of Ethnic Communities (CERJ) were murdered by unidentified persons in the municipality of Chiché, in Quiché, at the end of a patron saint's festival.

34. The Mission has found that the police, after accusing the victims of being thieves, failed to carry out basic inquiries. There were also serious irregularities in the judicial investigation, such as the illegal removal of the bullets from the body of Manuel Nix Morales when it was in the mortuary at Santa Cruz del Quiché hospital, before the autopsy, which meant that a ballistics test could not be conducted.

35. The Mission is verifying this case in conjunction with the extrajudicial execution, on 13 January 1995, of another CERJ member, Tomás Huachán Osorio, also in Quiché, and the repeated death threats and acts of intimidation against CERJ members (see para. 49).

Case 2

36. On 19 December 1994, in Guatemala City, unidentified persons shot and killed a Belgian Catholic priest, Alfons Stessel Fons, parish priest of Tierra Nueva, in Chinautla, when he was returning home. At this stage of its verification and even assuming that the killers were members of a "mara" or criminal gang as Government authorities maintained, the Mission is not ruling out the possibility of a political motive. This is the view held by authorities of the Catholic Church, since the priest, who was connected with the Confederación de Religiosos de Guatemala (Guatemalan Confederation of Priests), had been under surveillance shortly before his murder. Several days after the crime, MINUGUA members verifying the case were also subject to surveillance. The National Police arrested a member of the gang as the alleged murderer, but reliable sources have informed MINUGUA that they do not think he was involved. However, the same sources identify him as a police informer and say that military commissioners are operating in the same gang. Moreover, the Public Prosecutor's Office gave the National Police the names and addresses of three individuals alleged to have been responsible for the murder and the three of them escaped, allegedly with the complicity of police officers for whom arrest warrants have been issued. The Mission considers that, even if the crime was committed by a gang, there are grounds for investigating the possibility that Father Stessel's murder was planned and that military commissioners and members of the police were involved.

Case 3

37. On the night of 24 September 1994, Benigno Santos López Reyna, a schoolteacher and a leader of the Sindicato de Trabajadores de Guatemala (Guatemala Workers' Union), was murdered in the presence of his family by three hooded men, armed with guns, who broke into his home in the municipality of Tecún Umán, in San Marcos. The fact that, as they fled the scene, the killers stole a small suitcase of no value does not rule out the possibility of a political motive for the murder, given the victim's background.

38. The Mission is verifying the case also in the light of a complaint filed by the Sindicato de Trabajadores de la Educación (Union of Education Workers), and similar complaints filed by other trade unions in the San Marcos Department, about a series of incidents in which teachers belonging to unions, and members of their families, have been threatened, followed and intimidated.

Case 4

39. On 7 January 1995, in Guatemala City, Abner Esau Avendaño, a lecturer at San Carlos University, died when he was shot four times as he was leaving a pharmacy close to his home, accompanied by his wife. In 1992, he had received death threats which, under the protection of the office of the University president, he had reported to the Counsel for Human Rights.

40. MINUGUA feels that the investigation conducted by the Public Prosecutor's Office has been adversely affected by lack of coordination and by an absence of support from the National Police, which more than a month after the murder had still to make its report. The Mission is still verifying the case, in conjunction with other alleged violations against lecturers and students at the same university.

Case 5

41. On 29 November 1994, Ignacio Cruz Contreras, aged 19, was stopped and shot dead by three members of the police outside the National Police station at Cayuga in the municipality of Morales, Department of Zacapa. The friend who was with him was detained by one of the police, taken inside the police station, beaten and pressured not to make a statement about what he had witnessed. The police say that Ignacio Cruz was shot by his friend in an argument, a version denied by four eyewitnesses. The 30,000 quetzales that the victim had on him at the time of the incident, and with which he was going to conduct a bank transaction, disappeared.

42. Three days after the crime, the three police were transferred to another police station in the same department. Until MINUGUA began its investigation, the competent organs did nothing to investigate the murder, despite the complaint filed by the victim's family. The Mission has been informed that one of the police has resigned and it is verifying the follow-up of the case by the Public Prosecutor's Office and the National Police Directorate.

(b) Attempted extrajudicial executions

Case 1

43. On 25 November 1994, public prosecutor Abraham Méndez was the victim of an attempt on his life on the Pacific Highway near Amatitlán, in the Department of Guatemala. His attackers shot at him from a vehicle, using large-calibre weapons, and then fled without managing to hit him. Although this serious incident was reported to the competent authorities, the judicial dossier so far contains only the complaint and the relevant inquiries have yet to be made.

44. Since July 1994, when the prosecutor took on the investigation of the Carpio Nicolle case (see para. 70), he has received death threats, has been followed and watched by unidentified armed persons, and has encountered numerous impediments in his investigative work. During a reconstruction of the incident, a member of a CVDC pointed a firearm directly at the prosecutor. A few days later, unidentified persons followed him in the street and filmed his activities. The Mission wishes to mention the prosecutor's determination to continue investigating the Carpio Nicolle case, despite the conditions with which he is having to contend.

Case 2

45. On 31 December 1994, on the Pan-American Highway near Chupol, Chichicastenango, in Quiché, five men brutally attacked 15-year-old Mariano Morales Salvador and left him lying in the middle of the road, bleeding profusely. The Mission was informed by witnesses that the victim is the son of the Chupol representative of the Comité Unidad Campesina (Committee for Peasant Unity), a well-known community leader. His attackers accused him of being a guerrilla member because he had taken part in public demonstrations calling for the removal of the military base and because he is linked with human rights activities.

(c) Death threats

Case 1

46. Félix Hernández, President of the Federación Nacional de Servidores Públicos (National Federation of Public Servants), received several death threats by telephone on 29 December 1994 in Guatemala City. The same day, he was followed by a vehicle with polarized windows. Shortly before that, he had reported to the press a case of alleged corruption involving senior officials of the Ministry of the Interior. The Mission contacted the President of the Republic through COPREDEH and, through him, obtained special protection for Mr. Hernández.

Case 2

47. Eliseo Calel, a leader of the Human Rights Committee in Panajabal, Chimaltenango, and a member of the Defensoría Maya (Mayan Legal Defence Office) and the Kakchiquel Presbyterian Church, receives constant death threats from the local military commissioner and CVDC members. These threats increased after a

public meeting on the mandate of MINUGUA in which Mission observers participated. On that occasion, the observers witnessed a physical attack on him by a group connected with the commissioner who, moments before, had tried to prevent the meeting. Mission members were recently followed by the same commissioner and other persons when they were accompanying witnesses to make statements at the local prosecutor's office. The military commissioner, who has made death threats against the witnesses, even urged the prosecutor not to hear their testimony.

Case 3

48. On 14 December 1994, Catholic priest Daniel Vogt, parish priest of the municipality of El Estor, in Izabal, was informed by a person who identified himself as a member of the army intelligence service that his name was on a "list of subversives" to be eliminated. The priest is known for his social work on behalf of marginal communities and the indigenous population. When questioned by MINUGUA, the army reported that the alleged member of the intelligence service had left the army in October 1994.

Case 4

49. At midnight on 24 December 1994, Amílcar Méndez, founder of the Council of Ethnic Communities (CERJ), received an anonymous telephone call at the Council's head office warning him that his life was in danger and that the military authorities of Santa Cruz del Quiché, where he lives, had a file with photos and detailed information on him and his relatives. Since that night, he has received telephone threats accusing him of being linked to the guerrillas. MINUGUA found that the request made by the Office of the Counsel for Human Rights to the National Police that Méndez be given protection had been disregarded. Having been informed of other verbal threats made by a police authority of the zone on two occasions in February, and in the presence of MINUGUA, Mr. Méndez was received by the Minister of the Interior, who offered him protection and said that the police authority in question would be punished. Some months ago, the wife and daughter of Mr. Méndez were the victims of a kidnapping attempt that has yet to be investigated.

2. Right to integrity and security of person

50. In all, the complaints of violations of the right to integrity and security of person admitted during the period covered by this report account for a little over 22 per cent of all complaints. Considering the obligations of the Republic of Guatemala as a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it is particularly disturbing that a large proportion of complaints refer to cases of torture, the most serious violation of the right to integrity of person.

(a) Torture

Case 1

51. On 26 November 1994, a person who asked that his name be withheld was stopped and detained by a military patrol who accused him of being a guerrilla

member. The next day, the military authority of the zone denied that he was being held, but two days later he was released after MINUGUA contacted the General Staff and the military base. The then chief of the military zone admitted in writing to the Mission that the victim had been detained for arms possession. The victim informed MINUGUA that he had been tied up and interrogated under torture, in which a plastic bag had been placed over his head so that he could not breathe, a spike had been inserted in his palate and he had been beaten on the soles of his feet. In the course of his interrogation about the alleged origin of a rifle and while he was still blindfold and chained to a metal bed, a gold crown had been removed from one of his teeth with a sharp knife. MINUGUA confirmed the signs of physical abuse. The Mission has asked COPREDEH and the military authorities repeatedly for information on the follow-up to this case, to ensure that it does not go unpunished. So far, the only reply it has received is that "the case has been handed over to the public prosecutor" by the Ministry of Defence. The commander of the military zone at the time of the incident was assigned to another military zone.

Case 2

52. On 2 January 1995, in Guatemala City, Jorge Ottoniel De León Ramírez, a student at San Carlos University, was abducted by unidentified persons who blindfolded him, forced him into a vehicle and interrogated him violently about members of the Asociación de Estudiantes Universitarios (Association of University Students) and his alleged links with URNG and with Mario López, in whose death a number of police are implicated (see paras. 74-76). The victim was threatened before he was released and is now in hiding. A similar incident occurred to another student at the University, whose injuries have left him in precarious health. There are indications that members of the police were connected with these incidents.

Case 3

53. An individual who asked not be identified was abducted on 20 December 1994 in Cobán, Alta Verapaz, by an armed group of unknown persons. He was abandoned, with a gunshot wound in his back, after four days of violent interrogation about the activities of Olga Esperanza Choc Jolomná, a former judge and the Partido Aranzada Nacional congressional candidate for Cobán, who had been attacked a month previously. The police have conducted no investigations and are treating the incident as an ordinary crime.

(b) Other threats to the right to integrity and security of person

Case 1

54. Rural areas are witnessing incidents of the kind reported by the inhabitants of the municipality of Colotenango, Huehuetenango, who have stated that members of the local CVDC regularly fire their weapons at night, causing panic among the population and subjecting it to a virtual curfew. CVDC members allege that they are engaged in skirmishes with the guerrillas and accuse members of popular organizations of having links with URNG.

Case 2

55. On other occasions, threats have been made against individuals who have gone to the courts. On 20 May 1994, Víctor Mendoza Sic filed a complaint with the court in Salamá, Baja Verapaz, requesting the investigation and punishment of those responsible for the alleged collective extrajudicial execution of approximately 1,000 people, in the village of Agua Fría in the municipality of Rabinal in 1982, at the hands of members of the army, military commissioners and PACs. Since filing his complaint, the individual concerned has been kept under surveillance and followed both in Salamá and in the capital city, where he lives.

3. Right to individual liberty

56. The number of complaints of violations of this right during the period in question totalled 39, or 13.5 per cent of the total number of complaints admitted. The large number of complaints of arbitrary detention (21 cases) is particularly significant. There are also five cases of alleged enforced disappearances which occurred before the Mission was set up; these have been admitted because they constitute ongoing violations. Cases of forcible recruitment are included in this category (13 cases).

(a) Arbitrary or illegal detention

Case 1

57. Marvin Alfonso Vásquez was detained illegally by the police on 9 December 1994 for the alleged theft of a bicycle and possession of cocaine. His father, Oscar Vásquez, was murdered in September 1994 along with his 11-year-old son; he had been one of the main witnesses in the "panel blanco" case before the Inter-American Commission on Human Rights, in which State agents are implicated. The Mission found that the victim had been detained for 12 days without a court order, without any evidence against him and without access to defence counsel. While in police custody, he was wounded in the thorax.

58. It should be pointed out that there have been cases of arbitrary detention which, because of the complete lack of any legal authority on the part of the perpetrators, the secrecy involved and the premeditated violation of all the detainee's rights, have actually been classed as "abductions" by intergovernmental bodies for the protection of human rights.

Case 2

59. Jacinto Brito Seto, a member of the Communities of Population in Resistance in the Highlands (CPR-Sierra), was abducted on 29 January 1995 in the presence of eyewitnesses by a number of men in civilian clothing in the Sicomol district of the municipality of Nebaj, in Quiché. He was taken to the Nebaj military base, where he was beaten and accused of being a member of URNG. The following day, 30 January, the commander of the military base, in the presence of MINUGUA, denied all knowledge of the incident to the detainee's relatives, with the result that it became a case of enforced disappearance. On 31 January, the Mission received a communication from the military base dated 30 January,

stating that Brito Seto had been arrested that day by intelligence agents "just as he was and others with him were preparing to launch a grenade attack on the Nebaj military base", and had been handed over to the police in Santa Cruz. The judge in the case, after questioning the witnesses, ordered the detainee's release.

(b) Enforced disappearances

60. According to the Agreement, the Mission will examine events and situations occurring subsequent to its installation. Nevertheless, given that enforced disappearance is a continuing or ongoing crime, the Mission will verify cases where the evidence seems to indicate that the victim is still alive.

Case 1

61. On 19 October 1993, Francisco Guarcas Cipriano was abducted by unidentified armed persons at the bus station in zone four of the capital city. Since then, nothing has been known of his whereabouts. After a non-governmental human rights organization, the Grupo de Apoyo Mutuo (Mutual Support Group) (GAM), announced publicly in December 1994 that the victim was still alive, his relatives, who are also members of GAM, were repeatedly intimidated, subjected to death threats and accused of being guerrillas by members of the CVDC for the Semejá II district of Chichicastenango, in Quiché. The application for habeas corpus filed three months ago has not clarified the situation.

62. GAM handed over to the Mission several hundred copies of applications for habeas corpus filed on behalf of persons who disappeared prior to the installation of MINUGUA. The Mission is examining these applications and identifying those cases which can be verified as alleged violations of due process, such as those of Rumualda Camey and Tomás López Chitic.

4. Right to due process

63. A total of 46 complaints of violations of due process were admitted during the period in question. All these complaints, which account for 16 per cent of the overall total, refer to violations of procedural guarantees (presumption of innocence (4), the right to a hearing by a competent, independent and impartial tribunal within a reasonable period of time (3), the right of habeas corpus (8) and the legal duty of the State to investigate and administer punishment (31)).

64. The right to due process presupposes the existence of a set of minimum guarantees such as access to the courts, legal assistance and the opportunity to plead before the courts, produce evidence and receive sentences from the courts within a reasonable period of time. In addition, in pursuance of its functions under the Agreement, the Mission is verifying that investigations by the competent national bodies are being conducted independently, efficiently and in conformity with the legal order in force.

65. The current status of verification shows that there has been no progress in investigating a number of cases and that action and inquiries which could and should have been undertaken in a timely manner were not, thereby jeopardizing the gathering of evidence. The fact that the police have failed to enforce

arrest warrants, including some for the arrest of CVDC members, a fact admitted to the press on 7 February 1995 by the Minister of the Interior, has had an adverse effect.

Case 1

66. Efraín Bámaca, a URNG member known as "Commander Everardo", was captured by the army following a skirmish in 1992. The Mission received information from a diplomatic source, which corroborates the testimony of a witness, that Bámaca was captured alive with minor injuries and that he was later seen alive on military premises. Based on the information received, the Supreme Court of Justice announced in November 1994 that a special investigation would be conducted, given the failure of an application for habeas corpus and the existence of "sufficient grounds to suspect that (the individual) was detained or kept in detention illegally by a public official, members of the State security forces or regular or irregular agents, without disclosing his whereabouts". This investigation was entrusted to the Office of the Counsel for Human Rights, which requested the assistance of MINUGUA.

67. The special investigation by the Office of the Counsel for Human Rights was adversely affected by the circumstances of the case, the complexity of which requires that direct leads be followed up with all due thoroughness and speed, and that strategies be devised for comparing conflicting versions of the events. The absence of any replies to the requests for information which the Office sent to State institutions, including the Supreme Court and the Ministries of Defence and the Interior, should also be noted.

Case 2

68. Anthropologist Myrna Mack was murdered in September 1990 by a sergeant who worked in the documentation unit of the Presidential General Staff, known as the "Archives". He was tried, convicted and is serving his sentence. The current proceedings, designed to determine who masterminded the crime, exemplify the resistance and paralysis of the system for the administration of justice in dealing with a murder in which high-ranking army officers are allegedly implicated. On 20 December 1994, the Constitutional Court decided to authorize the prosecution of the alleged ringleaders, one of whom had been promoted to the rank of colonel two weeks previously. However, that same day and after a delay of almost seven months, the Constitutional Court, like the Supreme Court of Justice before it, avoided ruling on the confiscation of documents in order to preserve evidence that might demonstrate their involvement, invoking formal arguments to justify its tardy decision.

69. Moreover, the Mission has found irregularities in the handling of the application for clarification filed by the plaintiff in the light of the failure to rule on his request for these urgent measures, with the result that as of 10 February the decision handed down in December had not been enforced because the magistrates had not signed it. The Public Prosecutor's Office said that it had not taken action because it had not been notified of the decision authorizing the soldiers' prosecution; the Mission established that such notification had in fact been given. This lack of initiative on the part of the competent organs amounts to a denial of the right to justice.

Case 3

70. On 3 July 1993, Jorge Carpio Nicolle, editor of the newspaper El Gráfico and founder and former presidential candidate of the Unión del Centro Nacional party, was ambushed and murdered by a group of approximately 30 hooded individuals on the road to Chichicastenango, Quiché, during a campaign tour. Three of his aides also died.

71. The numerous irregularities in the case began on the very day of the crime. In violation of basic legal norms on the preservation of evidence and without a judge being present, soldiers from the base at Chichicastenango immediately arrived at the scene of the crime, combed the area in conjunction with the police and never reported on their findings. Since then, basic pieces of evidence such as empty cartridge cases, bullets, weapons used by the alleged killers, photographs and other material evidence, including the report of the National Police, have disappeared, and other pieces of evidence have been tampered with. Moreover, arsonists set fire to the court archives in Santa Cruz del Quiché only days after members of the San Pedro Jocopilas CVDC had asked for the files on this and other cases in which they are implicated. Ten CVDC members involved in the case were arrested by order of the judge and released on bail. Since then, public prosecutors, their assistants and the victim's family have all been threatened, and attempts have been made on the life of Karen Fischer, Jorge Carpio Nicolle's daughter-in-law, and on Abraham Méndez, the public prosecutor handling the case.

72. MINUGUA also verified that the defence lawyer for the CVDC members, who had handled the case when he worked in the Public Prosecutor's Office, arrives at inquiries with a military and CVDC escort, which obviously obstructs the proceedings and endangers the prosecution. Members of the Mission have also witnessed threats against the public prosecutor during inquiries.

73. A decision by the Supreme Court of Justice on a question of competence is currently pending, as is a ruling on the request for an order requiring additional steps to be taken so that other evidence can be incorporated. The responsibility of the National Police and the army for the loss of important evidence, the obstruction of the inquiries and the army's financial support for the defence of the accused are also important facts that cast doubt on the independence of the trial.

Case 4

74. On 11 November 1994, during a student protest which began near San Carlos University in the capital city, Mario Alioto López Sánchez, a member of the Students' Association, was shot in the leg and then beaten up by a group of policemen inside the University, as a video of the events shows. He died several hours later in hospital. The Special Commission set up to investigate the case, presided over by COPREDEH and consisting of university lecturers and a journalist, analysed videotapes of the events and concluded in its report that the investigation by the competent organs had been flawed and that the police bore responsibility.

75. Confirming this assessment, the Mission finds that the Public Prosecutor's Office did not consider it necessary to stage a reconstruction of the events and limited itself to conducting formal inquiries which did not make it possible to gather evidence that might have identified the perpetrators of the extrajudicial execution, thereby causing considerable delays.

76. Following a conflict of jurisdiction lasting several months which raised fears that the culprits might go unpunished and after repeated recommendations by MINUGUA, the judge issued a summons to the policemen implicated in the case and to Colonel Mérida, who had been Deputy Minister of the Interior at the time the events took place. The judge thus went back on his initial decision and ruled that the former Deputy Minister of the Interior, despite his military rank, should be subject to civilian jurisdiction; he also placed a restricted residence order on the former Director of the National Police. Both officials were released on bail, despite the fact that the seriousness of the crime would have warranted tougher measures.

5. Political rights

77. The Mission received three complaints which verification established did not involve violations of specifically political rights, such as the right to vote or to be elected, the right to take part in the conduct of public affairs or the right to have access to public service. Nevertheless, since general elections are scheduled for this year, it should be emphasized that there are a number of factors which militate against the exercise of these rights in Guatemalan society. These include the large number of people without identity papers, the low voter turnout in elections and other factors deriving from the country's structural deficiencies and the internal armed conflict.

6. Freedom of expression

78. The Mission has made a careful study of this right, which includes the right to seek, receive and disseminate information and opinions, and is verifying two recent complaints regarding possible violations of this right. On a positive note, it should be mentioned that the news agency CERIGUA, 3/ the magazine Noticias de Guatemala and the Guatemalan Human Rights Commission were recently established inside the country, whereas before they had to operate from outside. The extensive information on human rights being disseminated by the media is another positive development.

79. The Mission is nevertheless aware of the large number of cases and situations in which journalists and press organs were targets of violence in 1994. According to the Inter-American Press Society, three journalists were murdered in Guatemala during that year, another 36 were physically attacked and eight news media were the targets of various attacks. Two journalists were murdered in January 1995. For the moment, the Mission has no evidence to link the murders with the fact that the victims were journalists. Lastly, the Mission is concerned about the death threats issued against various journalists by the self-styled "Unidad Patriótica Anticomunista".

7. Freedom of movement

80. The Mission received complaints from the CPR-Sierra about restrictions placed on their freedom of movement by members of the army, military commissioners and CVDCs. These cases are being verified.

8. Freedom of association

81. The Constitution of Guatemala recognizes and guarantees this right. However, individuals who try to unionize or to take action to defend union interests often suffer violations of their rights, including those established in International Labour Organization (ILO) Conventions Nos. 87 and 98 (concerning freedom of association and protection of the right to organize and concerning the application of the principles of the right to organize and bargain collectively, respectively), which have been ratified by Guatemala. This report has already mentioned some cases of serious violations of the right to life and physical integrity of trade unionists which restrict the exercise of trade union activity (see paras. 37 and 46).

Case 1

82. Obed Valladares, general secretary of the Sindicato de Trabajadores in a Ministry of Health section in the capital city, is applying to leave the country after receiving constant death threats. Union leaders in public hospitals in the metropolitan area have also complained of persistent threats, surveillance and harassment.

Case 2

83. Herminio González, a municipal employee and a member of the ad hoc committee to establish a branch of the Sindicato de Trabajadores in the municipality of Esquipulas, in Izabal, received a letter of immediate dismissal on 28 November 1994. He told MINUGUA that a few days previously he had received death threats for trying to set up the union.

Case 3

84. The Mission is following the proceedings instituted in the case of the workers on the San Juan del Horizonte estate, in Quetzaltenango against the La Exacta company. In response to a collective application to the Labour Court in Coatepeque, demanding such basic workers' rights as payment of the legal minimum wage, 64 workers were dismissed. The authorities failed to rule in a timely fashion on the legality of that action. The workers were forcibly evicted from the estate by 400 to 500 members of the National Police, supported by two helicopters and a small plane, and three people were killed and nine others injured. According to complaints received by MINUGUA subsequent to its installation, the mayor, the judge and the parish priest of Flores-Costa Cuca, Quetzaltenango, who are accused of having helped the farmworkers' union, have received serious death threats. The mayor of Flores-Costa Cuca has received protection from the National Police through COPREDEH. Furthermore, the inhabitants of Los Encuentros, San Vicente, Rafael Pacaya and El Troje are still

being harassed for having supplied food to the La Exacta workers during the dispute.

85. The Mission is verifying the death threats against Carlos Enrique Lobos García, general coordinator of the Frente Sindical y Popular de las Verapaces in Cobán, which took the form of anonymous telephone calls and letters signed by a group calling itself "Jaguar Justiciero".

86. The following tables provide statistics on the complaints received and alleged violations of the various rights.

Table 1. Complaints admitted by category of alleged violation a/

Right to life	
Extrajudicial execution or deaths in violation of legal guarantees	27
Attempted extrajudicial executions	8
Death threats	72
Total	107
Right to integrity and security of person	
Torture	10
Cruel, inhuman or degrading treatment	6
Excessive use of force	1
Other threats	46
Total	63
Right to individual liberty	
Arbitrary detention	22
Enforced disappearance	9
Forcible unjust or discriminatory recruitment	7
Total	38
Right to due process	
Procedural guarantees	9
Right to habeas corpus	7
Legal duty of the State to investigate and punish	19
Total	35
Political rights	3
Right to freedom of expression	2
Freedom of association	11
Freedom of movement and residence	3
Other violations in the context of the internal armed conflict	
Attacks on civilian property	12
Attacks on property essential to the population	4
Lack of protection for the sick and wounded	1
Total	17
Grand total	279

a/ When a complaint refers to several violations, only the one considered most serious is counted.

Table 2. Complaints of alleged violations by type of right

		Percentage
Right to life	107	38.4
Right to integrity and security of person	63	22.6
Right to individual liberty	38	13.6
Right to due process	35	12.5
Right to freedom of expression	2	0.7
Political rights	3	1.1
Freedom of association	11	3.9
Freedom of movement and residence	3	1.1
Violations in the context of the internal armed conflict	17	6.1
Total	279	100

Commitment II. Commitment to strengthening institutions for the protection of human rights

87. The proper functioning of the system for the administration of justice is of the greatest importance for the effective exercise of human rights. The Mission, confirming the findings of many reports of human rights organizations, has been able to observe the serious deficiencies in this system in Guatemala.

88. With regard to the judiciary, the new Supreme Court of Justice has undertaken a review of the conduct of judges, especially in cases of alleged corruption, which has resulted in several dismissals. Although such measures are steps in the right direction, much more must be done to remedy the serious shortcomings in the administration of justice.

89. With regard to the Public Prosecutor's Office, Government support is essential during this phase of normative and operational transition resulting from the entry into force of the new Code of Criminal Procedure and the constitutional and legislative amendments concerning the Office's organization and functioning. As of 1994, prosecutors are in charge of directing criminal investigations, a function previously performed by judges. This requires increasing the number of prosecutors, which has already begun, and training them in this new task. It is also necessary to instruct the police to cooperate fully with prosecutors and, where necessary, to work under their supervision.

90. The Attorney-General of the Republic has informed MINUGUA of cases in which the police have failed to follow the instructions of the Public Prosecutor's Office, as well as a large number of cases in which they have not enforced arrest warrants. In this situation, it is essential to verify the proper functioning of the National Police as an auxiliary organ of justice. The Mission notes that the police have been cooperating more readily with prosecutors since the recent changes in the Ministry of the Interior.

91. The Public Prosecutor's Office, through the Attorney-General of the Republic has publicly acknowledged that there are three to four incidents of

intimidation against investigators per month and that attacks on them are also frequent. The Mission, for its part, has recorded cases of attempted extrajudicial execution, intimidation and death threats against prosecutors which, in at least one case, resulted in the victim's death and, in another, forced him to leave the country.

92. The Government has made a commitment to support the work of the Counsel for Human Rights so as to strengthen that institution. Although the Counsel's recommendations are not legally binding, the Government's attention and timely response to them will be a revealing indicator of its political will to support his work. The Counsel has stated publicly, however, that his recommendations have not been followed, that he does not have sufficient resources to carry out his duties properly and that he receives frequent threats.

Commitment III. Commitment against impunity

93. Verification has shown the extent of the problem of impunity. Most of the violations discussed in this report have received no response from the State in terms of identifying and duly punishing the perpetrators. The Mission believes that the existence of such widespread impunity, about which concern has also been expressed in other reports on human rights in Guatemala, is the greatest obstacle to the effective exercise of human rights.

94. Fulfilment of the commitment to take firm action against impunity must be considered in the light of all the commitments made in the Agreement. The Government's passive obligation "not to act", in other words, not to sponsor the adoption of legislative or any other type of measures designed to prevent the prosecution and punishment of persons responsible for human rights violations, is supplemented by its active obligation to "act", namely, to encourage all those measures designed to promote and perfect norms and mechanisms for the protection of human rights, as well as its legal duty to investigate human rights violations and punish those responsible. For this reason, it is essential to strengthen the national institutions responsible for investigating such incidents and, where appropriate, for imposing criminal, disciplinary or administrative penalties on the perpetrators.

95. Although the President of the Republic appointed a Legal Commission for the Peace Process to draft a bill that would enable amendments to the Penal Code to be amended so that enforced disappearances and summary or extrajudicial executions could be characterized as crimes of particular gravity and punished as such, no bill has been sent to Congress.

96. Concerning the commitment to foster in the international community the recognition of such human rights violations as crimes against humanity, the Mission is not aware that any action has been taken to that end.

97. With regard to the possibility that special laws or exclusive jurisdictions could be invoked to uphold impunity in respect of human rights violations, a careful study has begun of Guatemalan domestic legislation, with special reference to the military criminal justice system and the identification of cases in which the functioning of this special system could promote impunity.

Commitment IV. Commitment that there are no illegal security forces and clandestine structures; regulation of the bearing of arms

98. The large number of murders and threats, the particular characteristics of the victims and the modus operandi employed make it possible to attribute responsibility for these incidents to organized groups that would fall under the heading of this commitment. Although the Mission has so far been unable to prove reliably who runs these groups, the allegations made by the persons reporting the various cases and the preliminary evidence obtained in some of them point in two basic directions: "maras" or criminal gangs, and clandestine groups organized or used by agents of the State. Some of the gangs that exist in Guatemala are allegedly used, and paid in advance, to carry out this kind of criminal activity. The clandestine structures of State agents are allegedly used either against people who are considered to be subversives or to protect private interests or carry out "social clean-up" campaigns.

Case 1

99. Juan René Juárez González was abducted on 16 November 1994 in the municipality of San Pedro Carcha in Alta Verapaz. The following day, his body was found on the road from Cobán to Chisec, showing clear evidence of torture. According to testimony received by MINUGUA, the victim had feared for his safety ever since an attempt had been made to abduct him along with some friends. The victim's background and the methods used, added to the killings of six young men in the area under similar circumstances, point to the organized action or irregular groups whose members, according to the testimony received, include army and National Police personnel. During its verification of due process, the Mission found that the authorities investigating the case had been pressured and felt intimidated in performing their duties. It also found that, since it lodged the complaint with the Public Prosecutor's Office, the Juárez González family has received death threats and has been constantly harassed by individuals riding in vehicles with polarized windows. The names of the alleged culprits appear in connection with other cases of serious violations, including an enforced disappearance.

100. Guatemalans feel that violence and lack of public safety are one of their most serious problems and reflect the State's inability to fulfil its duty to guarantee such basic rights as the rights to life, physical integrity, security of person and individual liberty. Much of the responsibility for this rests with the National Police, whose inaction, flawed action or complicity on the part of some of its members are acknowledged by the general public and by the Government itself.

101. Professionalization of the police first requires the establishment of a public security programme that delimits the responsibilities of the various forces in order to separate police functions from military functions. These functions currently overlap because the Constitution gives the army responsibilities in the area of internal security, because this constitutional mandate and the term "subversion" are interpreted very loosely and because of the role played by the Mobile Military Police, the military commissioners and CVDCs. The last two receive very little professional training and perform security and law and order functions under the direct supervision of the army.

Professionalization also involves the necessary training and provision of human, technical and material resources to the security forces.

102. The Ministries of Defence and the Interior have received instructions from the President of the Republic to analyse the internal regulations of the security forces and establish whether they must be amended in order to increase control over actions of their members. The Government has been asked to inform MINUGUA of the kind of measures taken to give impetus to the purification process and of the preliminary assessment of the results achieved to date. Although the removal of senior police officials was a positive step, these measures must be continued and expanded. Verification of this commitment covers not only cases involving human rights violations, but also cases of negligence or abuse of power by members of the security forces.

103. The preamble to the Arms and Ammunition Act of 1992 is more than explicit about the opportunity that the law must give to citizens to guarantee by their own means the security that the State acknowledges that it is unable to provide them. The possession and bearing of firearms in Guatemala is thus virtually unrestricted, since the conditions that must be met are minimal.

104. This fact, rather than remedying the situation of insecurity that the Act was designed to address, has considerably aggravated the situation by increasing the levels of criminal activity and violence and even placing the police at a disadvantage against better-armed groups. In addition to this legal permissiveness, which has increased the number of registered weapons to around 50,000, the problem is aggravated by the large number of weapons that are in the possession of private individuals illegally. According to data submitted by the Public Prosecutor's Office, such weapons could number 250,000. The press, citing the firearms control body as its source, puts the number of illegal firearms at as many as 500,000.

105. The Mission appreciates the steps taken by the Ministry of the Interior, involving action at the national level to control arms possession and confiscate weapons that have not been registered legally, although it considers them grossly inadequate given the scale of the problem. The need to initiate legislative amendments to reduce the almost indiscriminate possession and bearing of arms that now exists, and increased control by the security forces over the illegal possession and bearing of arms and over the entry of unregistered weapons into the country, are considered fundamental aspects of this commitment.

106. There are cases in which the illegal bearing of arms is protected by the very institutions that are responsible for enforcing the Act. The National Police has been issuing to private individuals the so-called identity card or confidential credential with which they can carry unregistered weapons (which prevents identification of their owners and the conduct of ballistic tests. The current Director of the National Police has pledged to put an end to this practice. Furthermore, the Mission has verified that CVDC members with criminal or police records which would technically bar them from carrying weapons, such as those in San Pedro Jocopilas, are continuing to do so because the army has done nothing to stop them.

Commitment V. Commitment to guarantee freedom of association and freedom of movement

107. The Agreement identifies three aspects of this commitment which covers the issue of the CVDCs: (a) voluntary membership; (b) human rights violations by their members; and (c) establishment of new CVDCs. The Agreement gives the Counsel for Human Rights a crucial role in the verification of the first two aspects and the Mission therefore defers to the Counsel's findings. Nevertheless, the Counsel has indicated that the mechanism provided for in the Agreement has been unable to function, for practical reasons and owing to the prevailing climate of fear.

108. In his latest report, covering 1994, the Counsel states:

> "It has been found in a great number of cases that the population are compelled to perform this kind of service through coercion and threats which jeopardize the freedom of action and movement of the inhabitants of rural areas and, in some cases, restrict even their economic activities and employment."

Case 1

109. In the Lacamá Segundo district of Chichicastenango, in Quiché, the CVDC representative, alluding to 32 families who refuse to participate in the Committees, publicly harangued the population, saying that those who did not want to join and who talked of human rights were involved in subversive activities and that the day would come when they would be turned over to the authorities.

Case 2

110. Valeriano Cajbón, a resident of El Corozal, Cobán, Alta Verapez, reported that several military commissioners threatened that he would be killed if he refused to sign up with the CVDC.

Case 3

111. Similar information from various departments in the country's interior indicates that, before the deployment of MINUGUA, members of the army, accompanied by military commissioners and CVDC members, held public meetings to spread the information that the Missions's presence would be only temporary and that people should continue to join CVDCs. Other reports state that, during a visit by members of the army to San Miguel Uspantán, Quiché, leaflets were passed out calling on the population to joint CVDCs and saying that if they did not, there would be a return to the violence of the 1980s. Cases have been verified such as that in Casaca, Ixtahacán, Huehuetenango, where an army platoon, after gathering together the population and verbally attacking popular organizations, called people to join the Committees.

112. CVDC members have traditionally been identified by the Counsel for Human Rights and by reliable reports on human rights in Guatemala as being responsible for serious and repeated human rights violations. The information recorded by

the Mission on the current activities of CVDCs, based on the verification of a number of complaints on violations of priority rights, supports the conclusion that they are still a source of human rights violations.

113. The Mission is verifying the progress of an application for amparo (enforcement of constitutional rights) brought by the residents of San Pedro de Jocopilas and the Archdiocesan Human Rights Office, requesting that the Ministry of Defence should be ordered to disarm the local CVDC, in exercise of its duty to supervise and coordinate it. They claim that several CVDC members have been guilty of murders, threats and intimidation and that the CVDC poses a permanent threat to the population's rights to life, security and integrity. Although an application for amparo, by virtue of its special nature, is supposed to be dealt with by means of summary proceedings, in this case, the action was brought in June 1994 but by February 1995 the investigation was still pending, owing to the unjustified delay in notifying interested third parties, namely the CVDC members.

114. The military commissioners, who are linked with CVDCs by virtue of the similarity of some of their functions and the areas in which they carry out their tasks, deserve special mention. The existence which goes back a long way in the history of Guatemala, is governed by the Regulations for Military Commissioners of May 1993 and is designed to ensure that the army leadership has representatives in every community to carry out security functions and collaborate with it. The commissioners' functions also include army recruitment, law and order and social functions, since they have to act as mediators among the various community structures.

115. The wide variety of tasks assigned to the military commissioners and CVDCs, the backing they receive from the army and the large number of them in each town or village (the total number of commissioners is unknown, while the number of CVDC members is estimated at around 400,000) give the commissioner and the CVDCs considerable authority in the community. In some cases, that authority has been used to commit abuses, human rights violations and criminal acts.

116. Regarding the creation of new CVDCs, the Government undertook unilaterally not to encourage the organization of new committees, or to arm them, in any part of the national territory, provided that there was no reason to do so. The Mission has not observed the creation of any new committees. In December 1994, the Mission informed COPREDEH of its concern at reports that the military authorities in Zacapa were seeking to create a new CVDC. In January 1995, it was learnt that this decision had been reconsidered and ruled out by the same authorities. It should also be mentioned that, in January, the Minister of the Interior issued a statement denying press reports that he had decided to create new CVDCs in the capital city.

Commitment VI. Commitment concerning military conscription

117. The Agreement stipulates that conscription shall not be forcible and that it must be fair and non-discriminatory. Pursuant to this commitment, President de León announced on 30 June 1994, in his Army Day speech, that until such time as a new military service act came into force, compulsory military conscription was being suspended and only voluntary military service would continue to exist.

118. The Mission has verified cases of forcible recruitment. In addition, it has been discovered that the army has been sending call-up letters to young men of military age, informing them that they have been selected for military service and ordering them to report to various barracks. Complaints about this practice have also been made to the Counsel for Human Rights by members of indigenous people's organizations. The procedure followed and the wording of the letter clearly amount to pressure on the person receiving it, encourage forcible recruitment, raise questions about discrimination in the selection process and, above all, contradict the spirit and the letter of the transitional voluntary system that the President of the Republic is seeking to introduce for military service. It should be noted that on 31 January, the President, on being informed by MINUGUA of the practice being used by the army, informed the Mission that he would give appropriate instructions for its suspension.

119. Pursuant to this commitment, the Government has submitted to Congress the draft of the new military service act prepared by the Ministry of Defence; this complements the proposals put forward by the Counsel for Human Rights and by the Guatemalan Widows' National Coordinating Committee (CONAVIGUA).

Commitment VII. Commitment to safeguard and protect individuals and entities working for the protection of human rights

120. In the context of the internal armed conflict and the resulting polarization of society, the work of promoting and protecting human rights has in some quarters been publicly equated with subversive activities. This message has been reiterated in public statements and accusations by senior military authorities. Verification has revealed the persistence of this attitude, especially among military commissioners and CVDC members. As a result, entities and individuals carrying out activities related to human rights have been the victims of various serious human rights violations.

Case 1

121. On 30 November 1994, Juana Calel Algua, of Chichicastenango, Quiché, was accused by the CVDC representative of being a guerrilla member because of her active membership of a human rights organization.

Case 2

122. On 4 December 1994, a relative of Nobel Peace Prizewinner Rigoberta Menchú, who is a member of the Human Rights Committee in Uspantán, Quiché, and a representative of Defensoría Maya, was publicly accused by CVDC members of being "a guerrilla leader, like everyone in his family" and "like all human rights activists, of organizing the population to join the guerrillas".

Case 3

123. Pedro Martín García was publicly threatened by the leader of the Huehuetenango CVDC for distributing copies of the Agreement. The copies were destroyed by the same leader. This case is one of several which show how military commissioners and CVDC members automatically identify the subject of human rights with URNG activities.

Case 4

124. On 10 January 1995, the home of María Mónica Sis Iboy, a CONAVIGUA representative, in the village of Tempisque, Baja Verapaz, was shot at by two individuals who, according to information given to the Mission, have close ties to the military commissioner. The victim, whose husband has been missing since 1987, has received repeated death threats from the commissioner, accusing her of "supplying the guerrillas".

Case 5

125. A relative of Natividad Felipe Laínez, CONAVIGUA representative in the village of La Cumbre in the municipality of San Ildefonso, Huehuetenango, reported that on 6 February 1995, an army patrol shot at his house. Although the military authorities initially denied to the Mission that a patrol had passed that way, they later admitted that they had opened fire because they had been "attacked by the dogs".

126. As a special protective measure, the Government has instructed COPREDEH to draw up a list of entities and individuals working for the protection of human rights, and to receive telephone complaints 24 hours a day. On the basis of such complaints, COPREDEH is responsible for coordinating prompt and exhaustive action by the competent national bodies to investigate and provide protection. Nevertheless, the Mission is concerned at the inadequate response of the competent bodies and institutions.

Commitment VIII. Commitment to compensate and/or assist the victims of human rights violations

127. The Government considers the civilian and socio-economic measures and programmes referred to in this commitment to be part of its overall policy planning, rather than isolated actions. In this context, the government bodies responsible for project or programme planning have been instructed by the Government to take this commitment into account in performing their functions.

128. The Government has been asked to report on the bodies responsible for designing these measures and programmes and on the progress made in implementing this commitment. In the verification process, the Mission will pay particular attention to the way in which those bodies determine who is the victim of a human rights violation, the criteria for selecting beneficiaries, and the priority given to those whose need is greatest, given their economic and social position. In addition, it will be important to verify that these measures and programmes do not involve any discrimination on political, ethnic, social or religious grounds.

Commitment IX. Commitment concerning human rights and the internal armed conflict

129. Until such time as the Agreement on a Firm and Lasting Peace is signed and, hence, as long as military operations continue, the Mission must verify the commitment made by both parties to respect the human rights of wounded, captured

or disabled combatants and to put a stop to the suffering of the civilian population.

Case 1

130. On 2 February 1995, near the Ximula river in Quiché, a duly identified ambulance of the volunteer fire brigade, which was evacuating a wounded soldier, was hit by a rifle shot. Although in a letter dated 9 February addressed to MINUGUA, the URNG command denied responsibility for the incident and stated its determination to fulfil these commitments, there is reason to believe that the shot came from URNG lines, although it is true that the proximity of the fighting makes it difficult to judge whether the shot was intentional.

Case 2

131. The Mission took action on its own initiative following the publication in the press of a communiqué issued by the Army Information and Publicity Department accusing alleged URNG members of temporarily occupying, on 10 February 1995, a village in Nuevo Progreso, San Marcos. The troops in question were alleged to have attacked a number of shops and dwellings, raped three under-age girls, and kidnapped seven women. In the light of the seriousness of the incident and the alarm it caused among the population, the Mission carried out an urgent verification in which it found that, while the description of the events contained in the communiqué was generally accurate, the culprits were a gang of criminals who operate frequently in that area.

132. The persistence of the armed conflict and its adverse effects on the civilian population forced the Mission to draw on certain basic principles of international humanitarian law. It is from those principles that the so-called "rule of proportionality" is derived, which helps to draw the not always clear-cut line between a legitimate military operation and a violation of the Agreement.

133. Guatemala has ratified the four Geneva Conventions on humanitarian law of 1949 and also the two Protocols Additional to those Conventions of 1977. Those legal instruments, being international treaties, are legally binding on Guatemala if the actual conditions exist for their application. Although the internal armed conflict does not meet the conditions for applying Additional Protocol II in its entirety, a number of principles deriving from humanitarian law are applicable. Those principles are also human rights norms and are universally valid. Thus, the minimum level of rights protected by article 3 common to the four Geneva Conventions coincides with the rights protected by the International Covenant on Civil and Political Rights, and also with those protected by the American Convention on Human Rights; both instruments are compulsory and binding for Guatemala, in all circumstances. Regarding Protocols I and II Additional to the Geneva Conventions, several of their basic norms also coincide with those contained in the above-mentioned international instruments.

134. The minimum rules and principles referred to above include those intended to protect the civilian, non-combatant population. Any armed attack on the civilian population is obviously prohibited, and that prohibition does not end

even if the indirect aim is to achieve military objectives, unless there is a pressing military need and, at the same time, a certain proportionality between the military objective to be achieved and the expected and foreseeable harm which may be caused to the civilian population. Additional Protocols I and II provide some guidance for the interpretation of the rule of proportionality and for acts of reprisal. The Mission has a duty to consider the complaints transmitted to it, as well as those cases in which it has intervened on its own initiative, because of the importance of the issue.

Case 3

135. Several electric power pylons were deliberately demolished, leaving various areas of the country and large numbers of the population without electricity and causing damage to the national utilities infrastructure. During the verification carried out by the Mission into these incidents, the URNG command admitted responsibility for blowing up electric power pylons in Santa Bárbara, Piedras Negras and Huehuetenango on 31 December 1994 and 14 January 1995, as well as in Chiché, Quiché, on 8 January 1995. Subsequently, on the basis of a presentation made to it by the Mission on the application of the rule of proportionality, on 23 January URNG pledged to MINUGUA that it would desist from such actions when they had no direct impact on the armed conflict. URNG denied responsibility for the explosion which occurred subsequently in Alta Verapaz and which had the greatest impact, causing restrictions on electricity consumption in several areas of the country, including the capital city, for eight days.

Case 4

136. According to army sources, the refusal by owners of rural estates to pay the so-called "war tax" has led to reprisals involving the destruction by URNG forces of installations on those estates. URNG has admitted responsibility for actions of this kind (destroying installations), although it considers them to be operations intended to achieve a clearly military objective which is legitimate in the context of the armed conflict. The basis of their argument is that these rural estates, with the consent and approval of their owners, are or have been used to supply and billet counterinsurgency military units, and that, in other cases, they have private security groups which monitor estate employees and restrict their rights.

137. Both in the cases of sabotage of electric power pylons and in the cases of destruction of installations on rural estates, the Mission concluded that, bearing in mind the rule of proportionality and the commitments which it has to verify, in cases for which URNG forces are responsible, URNG has failed to fulfil the commitment made in the Agreement to put a stop to the suffering of the civilian population and has thus failed to observe minimum principles deriving from humanitarian law and international human rights law.

138. As laid down in the Agreement, MINUGUA has taken into account the situation of the population directly affected by the internal armed conflict (including displaced persons, refugees and returnees) and has deployed staff in those areas where the armed conflict gave rise to the forced migration of considerable numbers of people both within and outside the country's borders. The Mission has established close cooperation and collaboration with the Office of the

United Nations High Commissioner for Refugees (UNHCR), in a manner consistent with their respective mandates. In addition, MINUGUA staff have participated regularly in the working meetings convened by the technical commission created pursuant to the Agreement on resettlement of population groups uprooted by the armed conflict, keeping themselves informed of the problems faced by refugees returning to Guatemala from Mexico, by CPRs and by displaced population.

139. The return and resettlement of Guatemalan refugees is being seriously affected by the problem of land ownership, as land holders are being asked to give back land to the original owners or, failing that, to find solutions involving compensation. The Mission is paying particular attention to this situation, which also affects internally displaced persons and CPRs and is a source of conflict and possible human rights violations.

140. The majority of Guatemalans among uprooted populations do not have personal documentation. As a result of this situation, which is a direct consequence of the armed conflict, they are unable to exercise their basic rights to security, individual liberty and freedom of movement, and their political rights.

V. INSTITUTION-BUILDING, INTERNATIONAL TECHNICAL AND FINANCIAL COOPERATION AND HUMAN RIGHTS PROMOTION AND EDUCATION

141. The Agreement gives MINUGUA the authority to strengthen Guatemalan governmental and non-governmental institutions for the protection of human rights. To that end, the Mission must promote international technical and financial cooperation and contribute to a culture of respect for human rights. The following paragraphs briefly describe the plans and achievements made in these areas during the period covered by this report.

A. Institution-building

142. To maximize its fulfilment of this part of its mandate, MINUGUA has agreed with the United Nations Development Programme (UNDP) to create a Joint Unit supervised by the UNDP Resident Representative and the Director of MINUGUA. The Unit's principal tasks are to promote projects for strengthening Guatemala's human rights institutions and to secure the necessary technical and financial cooperation.

143. The approach followed has been to identify a number of activities that will have an immediate impact on institutions identified for their importance in ensuring the full application of the rule of law, and at the same time to design a wide-ranging project for the structural reform of the administration of justice.

144. The group of projects to be carried out within a period of six months comprises:

(a) Support for the Office of the Public Prosecutor: by agreement between the Attorney General of the Republic and the MINUGUA-UNDP Joint Unit, a working group has been set up, consisting of three prosecutors and three international

consultants, to train the country's prosecutors in the application of the new Code of Criminal Procedure and to assist them in the investigation of crimes and the prosecution of those responsible. Activities under this subsection began in February 1995;

(b) Support for the Counsel for Human Rights: a coordinating committee has been set up between staff of the Office of the Counsel for Human Rights and MINUGUA for the purpose of strengthening the Office. Needs have been identified in the areas of management and the investigation of human rights violations. At the same time, consultations are being held with the international community with a view to planning future cooperation activities;

(c) Support for the Ministry of the Interior: two kinds of activities are planned: one aimed at improving criminal investigation and cooperation between the Police and the Office of the Public Prosecutor, and the other aimed at improving the prison system, which includes making a survey and possibly adopting prison legislation based on modern standards.

145. The wide-ranging project for the structural reform of the administration of justice (entitled "Project for strengthening the rule of law") is being drawn up in conjunction with the executive and judicial branches, the Office of the Public Prosecutor and the Counsel for Human Rights and covers the courts and public defence, the police, the prison system, the Office of the Public Prosecutor and the Counsel for Human Rights. It provides for the establishment of a coordinating commission which would be the national counterpart for any financial and technical cooperation which the international community may provide for improving Guatemala's democratic institutions. MINUGUA is currently engaged in consultations to promote the establishment of the coordinating commission.

146. Among other components, the project includes completion of legal reform already begun in Guatemala with the adoption of the new Code of Criminal Procedure and the law on the Public Prosecutor's Office, modernization of the administrative systems of the institutions involved and a comprehensive legal education plan. This project will require a considerable amount of financial cooperation which could be channelled through donations and loans from multilateral financial institutions.

147. In the area of non-governmental organizations, a study will be made of non-governmental human rights organizations in order to explore the possibilities of cooperation between them and the Mission. At least three areas of interrelationship have been identified: (a) non-governmental organizations as sources of information for the verification and submission of complaints; (b) MINUGUA as a channel for cooperation to strengthen non-governmental organizations in their work of protecting and promoting human rights; and (c) organization of seminars and training courses in all regions of Guatemala.

148. In the areas of human rights promotion and education, educational activities have been carried out for the benefit of governmental and non-governmental organizations. A promotion and education strategy is currently being devised and it is envisaged that the strategy will be implemented in a

decentralized manner, in view of the ethnic diversity of the Guatemalan population.

B. International cooperation

149. The Mission must promote access to technical and financial resources for the implementation of institution-building and human rights promotion and education activities and to facilitate the dissemination of information on its mandate.

150. Regular consultations are being held with the representatives of the international community in Guatemala, including the Group of Friends of the Guatemalan peace process, the European Union countries and Japan, in order to secure their cooperation. This can be channelled through a trust, which is in the process of being approved, or through bilateral agreements and conventions. The Mission is grateful to countries which have already indicated their willingness to support the strengthening of the rule of law in Guatemala.

VI. CONCLUSIONS AND RECOMMENDATIONS

151. It should be noted that, three months after its establishment, MINUGUA is already deployed throughout the territory of Guatemala as a result of the opening of eight regional offices and vie sub-offices. Deployment was facilitated by the support and cooperation of the Government, agencies of the United Nations system and, in particular, the Development Programme for Displaced Persons, Refugees and Returnees in Central America (PRODERE). The rapid start of verification work in the regional offices was largely made possible by the effective incorporation of the legal officers and human rights observers provided by the United Nations Volunteers. The Mission also expresses its special gratitude and thanks to the six ambassadors of the Group of Friends of the Guatemalan peace process (Colombia, Mexico, Norway, Spain, United States of America and Venezuela) for their constant support and invaluable advice.

152. The signing of a status-of-mission agreement between the United Nations and the Government of Guatemala met the requirements stipulated by the General Assembly in its resolution 48/267. The speedy ratification of this agreement by the Congress of the Republic, which demonstrated the support of the legislative and executive branches for MINUGUA, has enabled the Mission to operate in Guatemala on solid legal foundations. Other objectives reached have been: the establishment and regular functioning of bilateral working mechanisms with the Government and URNG; the signing of agreements on security arrangements with each of the parties; the establishment of close relations with the competent State organs in the area of human rights; and permanent, flexible contacts with other human rights bodies and non-governmental organizations.

153. As a result of the verification and institution-building activities carried out by MINUGUA during the three months of its operation (21 November 1994-21 February 1995), and even though it is not yet possible to make final determinations, the following conclusions may be drawn:

General commitment regarding human rights

154. In fulfilment of the terms of the Agreement, the Mission paid particular attention to verifying the rights which were accorded priority under the Agreement.

155. The Mission concludes that there have been numerous violations of the right to life, including cases of extrajudicial executions or deaths in violation of legal guarantees. The large number of people against whom death threats have been made is also extremely disturbing. The right to life seems to have been the right most seriously affected during the reporting period, and the Mission expresses deep concern at this fact. The vast majority of cases involving death have not been adequately investigated or resolved by the competent authorities, and this increases levels of impunity, promoting a widespread feeling of insecurity among the public, and makes it more difficult to distinguish violations of the right to life which could be classified as human rights violations from common crimes without a political motive.

156. The Mission urgently recommends that the Government should institute strict control over its agents through existing hierarchical structures; implement the public security programme devised by the Ministry of the Interior; and, above all, combat any incident or attitude which could give rise to impunity. At the same time, it recommends that the Government should implement and take into account the provisions of the following international legal instruments and, in particular, make their contents known to members of all the security forces:

(a) Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979;

(b) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which supplement the Code of Conduct and were adopted by the Eighth United nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1990;

(c) Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council in resolution 1989/65 of 24 May 1989.

157. The Government has not adequately guaranteed the right to integrity and security of person, that is to say, the right to be free from torture or other cruel, inhuman or degrading treatment, and cases have been verified in which military and police officers appear to be implicated. The Mission has no information that such cases have been investigated in depth or that the guilty parties have been prosecuted.

158. The Mission recommends that criminal legislation should be amended so as to incorporate in it a specific description of the crime of torture, making it punishable by appropriate penalties which take into account its grave nature, as required in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has been ratified by Guatemala. In addition, it recommends that Guatemala should make the declaration referred to in article 22 of that Convention, recognizing the competence of the Committee against Torture

to receive and consider communications from or on behalf of individuals who claim to be victims of acts which violate the provisions of the Convention. It further recommends that the Government should transmit specific instructions to military and police officers in order to prevent such acts, warning them that any such act is a criminal offence, subject to disciplinary, administrative and criminal penalties.

159. The Mission also recommends that the Government should implement and take into account the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988.

160. As to the right to individual liberty, the Mission has noted cases of arbitrary or illegal detention which, according to available information, have not been investigated in depth; moreover officers responsible have not been disciplined or brought to trial.

161. The Mission recommends that the Government should institute strict control, under a hierarchical command structure, over the actions of all officials authorized by law to make arrests, detain persons and guard detainees and prisoners. Other officials should not participate in such acts.

162. The Mission concludes that in many cases, the right to due process has not been properly respected; it has verified glaring defects in the functioning of the judiciary, the Public Prosecutor's Office and the National Police. In particular, no progress has been made in the investigation of criminal acts alleged to constitute human rights violations, and specific actions and inquiries which could and should have been undertaken promptly were not carried out, making it difficult to obtain evidence. The fact that, in a number of cases, the police have not enforced duly issued arrest warrants has also had an adverse effect.

163. The Mission recommends that changes should be made in the operation of the above institutions, so that they can comply fully and promptly with their obligations to investigate, prosecute and punish cases of human rights violations and, where appropriate, grant due compensation to the victims of such acts or, if the victims have died, to their families. Similarly, it recommends that the Government should encourage the Congress of the Republic to ratify the Optional Protocol to the International Covenant on Civil and Political Rights recognizing the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

164. The few complaints received by the Mission of violations of freedom of expression are under verification. In addition, the Mission's presence in Guatemala is enabling it to observe the operation of a free press which reports regularly on the human rights situation. However, the cases in which journalists and other persons linked with the communications media have been attacked and, in some cases, killed, are a source of concern. Shortcomings in the investigation of these incidents by the Public Prosecutor's Office and the National Police make it impossible at present to distinguish attacks which might have been directed against journalists in their professional capacity from those

which might have had other motives. It is also disturbing that some journalists, after publishing critical pieces and articles on politically sensitive subjects, have received threatening anonymous telephone calls and letters accusing them of having links with subversives.

165. The Mission recommends that the Government, through the competent organs, should protect the life and integrity of journalists so that they can perform the function that is theirs in a democratic society.

166. The Mission concludes that the State, through its competent authorities, has not taken effective measures to guarantee freedom of association as regards the right to form trade unions, join them or withdraw from them.

167. As to political rights, the Mission has not verified any violations of specifically political rights, such as the right to vote and to be elected, to take part in the conduct of public affairs and have access to public service.

168. Even so, in view of the problem of low voter turnout in elections, citizens' lack of identity papers and other aspects already noted, the Mission recommends that the Government should pay due attention to these shortcomings, particularly in an electoral year.

Commitment to strengthening institutions for the protection of human rights

169. Proper functioning of the system for the administration of justice is of crucial importance for the exercise of human rights. The Mission, in the course of its verification activities, has noted serious shortcomings in that system. At the same time, the Mission is concerned about the large number of acts of intimidation and threats against judges and prosecutors - which in at least one case went as far as murder - motivated by their professional activity in socially or politically sensitive cases.

170. The Mission is interested in the Government's follow-up to the recommendations made by the Council for Human Rights and recommends, in turn, that refresher courses and specialized courses for magistrates, judges and prosecutors should be developed as a matter of urgency and that the infrastructure of the system for the administration of justice should be modernized. Furthermore, it recommends that the competent bodies should implement and take into account the provisions of the following international legal instruments:

(a) Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1985 and confirmed by the General Assembly in its resolutions 40/32 and 40/146 of 29 November and 13 December 1985, respectively;

(b) Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1990.

Commitment that there are no illegal security forces and clandestine structures; regulation of the bearing of arms

171. Verification has yielded evidence of the existence of organized groups which would fall within the scope of this commitment. These appear to consist of bands of criminals who are allegedly used, in return for advance payment for the illicit act requested, by clandestine structures to which agents of the State are linked.

172. The Mission recommends that such forces should immediately be identified, disbanded and suppressed, and that possible links between them and State agents should be investigated, establishing accountability.

173. With regard to the purification and professionalization of the security forces, the Mission notes with interest the efforts made by the Government through the Ministry of the Interior, including measures to replace senior officials of the National Police. An assessment of fulfilment of this commitment cannot be made until a reasonable period of time has passed, however.

174. The Mission recommends that the Government should pursue the measures already taken, strictly respecting the legal guarantees of those affected by such measures. In this context, it would be desirable to separate the police function from the military function and to have a police body with sufficient technical and operational training to carry out its activity in a spirit of respect for human rights, and for such a body to have greater human and material resources so that it can operate in rural areas and perform its irreplaceable functions. The Ministry of the Interior should issue specific instructions on the obligation of the police to cooperate with the Public Prosecutor's Office in investigating crimes and to follow the guidelines issued by prosecutors in this respect, as required by law.

175. As to the regulation of the possession, bearing and use of firearms by private individuals, the Mission values the measures ordered by the Ministry of the Interior, and already implemented, to conduct inspections nation-wide to monitor the regulation of the bearing of arms and confiscate illegally held firearms, although it considers them to be grossly inadequate in view of the scale of the problem.

176. The Mission recommends that statutory changes should be made so as to heavily restrict the right of private individuals to carry firearms and increase police and customs control, the latter in order to prevent the illegal entry of weapons into Guatemala.

Commitment to guarantee freedom of association and freedom of movement

177. It seems logical to consider the military commissioners and CVDCs together because of the close links between them and the fact that similar complaints have been made about both.

178. The Comprehensive Agreement assigns special tasks to the Council for Human Rights with regard to monitoring the voluntary nature of CVDCs and possible

human rights violations by their members. Accordingly, the Mission defers to the Counsel's findings.

179. None the less, the Mission was able to observe from its own verification of the rights accorded priority under the Agreement that military commissioners and CVDC members have been responsible for: (a) persistent and repeated human rights violations of various kinds; and (b) many cases of intimidation, harassment and threats against community residents in order to force them to join or remain in CVDCs.

180. Based on its verification, the Mission believes that the Government has fulfilled its commitment not to establish new CVDCs.

181. The Mission recommends that the Government should support the work of the Counsel for Human Rights in order to ensure proper verification of this commitment. It further recommends that the activities of military commissioners and CVDCs should be monitored and that those accused of human rights violations and other criminal offences should be brought to trial and, where appropriate, relieved of their functions.

182. Given the paramount importance of the rights in question, the Mission is concerned about the actions of military commissioners and CVDCs, who have extended their functions to include some which traditionally come within the sphere of law and order. It is not legally possible to delegate essential State functions to such groups. The Mission therefore recommends that the State alone should be authorized to use force, subject to the normal controls available under the rule of law and the corresponding responsibilities.

Commitment concerning military conscription

183. The President of the Republic, pursuant to this commitment, ordered on 30 June 1994 that military conscription be suspended and that, until such time as a new military service act entered into force, recruitment would be on a voluntary basis only.

184. The Mission concludes that the Government has not fulfilled this commitment, since the Mission has verified cases of forcible recruitment.

185. In addition to these cases, the army has selectively sent call-up letters to young men of military age, ordering them to military units for military service. On 31 January 1995, the President of the Republic assured the Mission that he would issue instructions for that practice to be discontinued, thereby reaffirming his decision of 30 June.

186. The Government has submitted a draft of a new military service act to the Congress of the Republic.

187. The Mission recommends that the Government should supervise recruitment for military service, to ensure that it is strictly voluntary, pending the entry into force of a new military service act which will have to be consistent with the spirit of the Comprehensive Agreement.

Commitment to safeguard and protect individuals and entities working for the protection of human rights, as well as their activities

188. The Mission received and admitted for verification various complaints related to the fulfilment of this commitment. It is profoundly concerned at the many cases of abuse and intimidation against such individuals and entities by members of the army, military commissioners and members of CVDCs, a number of whom have publicly equated working for the promotion and protection of human rights with engaging in subversive, pro-URNG activities, with all the risks that this implies in a situation of armed conflict. Except in a few isolated cases, the Government has yet to respond satisfactorily to such incidents.

189. The Mission recommends that the Government should adopt effective mechanisms and measures to guarantee protection for such individuals and entities and for their activities. Accordingly it should put an end to any intimidating act or public statement against them by military personnel, miliary commissioners or CVDC members. The Mission recalls that, in its Declaration and Programme of Action, the World Conference on Human Rights, held at Vienna in June 1993, recognized the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities and that they should be free to carry out their activities without interference. 4/

Commitment to compensate and/or assist the victims of human rights violations

190. The Government has yet to fulfil its commitment to adopt civilian and socio-economic measures and programmes to compensate and/or assist anyone who has been a victim of a human rights violation or who might be in the future. The Mission recommends the speedy adoption of such measures and programmes, to which end the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985, should be taken into account.

Commitment concerning human rights and the armed conflict

191. In verifying the commitment to end the suffering of the civilian population, the Mission took into account the rule of proportionality mentioned above (see paras. 132 and 134) and the basic applicable principles of international law. On that basis, URNG sabotage of electric power pylons and the installations of rural estates can be characterized as violations of this commitment.

192. Such actions affecting private property or public utilities designed to meet the needs of the civilian population involve a high degree of risk for civilians and cannot be justified as legitimate military operations. Verification of such incidents does not reveal the existence of any pressing military need, but does reveal a clear lack of proportionality between the intended military objective and the damage caused and the risk run by the civilian population. The Mission therefore finds that URNG in cases attributable to it, has not distinguished between civilian property and military targets and that it has attacked civilian property as well, at times by way of reprisal.

193. On 23 January 1995, URNG pledged to MINUGUA that it would desist from acts of sabotage against electric power pylons.

194. The Mission recommends to URNG that it should issue precise instructions to its combatants to refrain from placing at risk persons wounded in the armed conflict and from endangering ambulances and duly identified health workers who assist such wounded persons. It further recommends that URNG should not destroy, or threaten to destroy, installations on rural estates, and that it should abide by its decision to refrain from sabotaging electric power pylons. It should also prevent any retaliatory attacks against civilian persons or property.

195. Lastly, the Mission appeals to URNG to desist from all acts of intimidation against individuals, since such acts contribute to feelings of defencelessness and to impunity.

196. Concerning the situation of the population directly affected by the internal armed conflict (including displaced persons, refugees and returnees), the Mission recommends that, without waiting for the entry into force of the Agreement on Resettlement of Population Groups Uprooted by the Armed Conflict, the laws on the replacement of records and birth certificates should be amended in order to make it easier, in particular, for internally displaced persons to obtain documentation in their new places of residence.

Commitment against impunity

197. In agreeing on the need for firm action against impunity, the parties noted what the Mission considers to be the most serious obstacle to the enjoyment of human rights in Guatemala. The Mission has observed numerous, persistent serious human rights violations to which, in nearly every case, there has been no response from the competent authorities.

198. The Mission notes that the Government has yet to comply with its commitment to initiate in the legislature amendments to penal legislation that would ensure that "enforced disappearances" and "summary or extrajudicial executions" are characterized as crimes of particular gravity and punished as such. Nor has it taken action to join in the efforts being made in the international community to have those two human rights violations characterized as crimes against humanity.

199. It recommends to the Government that it comply with both commitments and also that it promote legislative amendments with a view to limiting the jurisdiction of military courts to specifically military offences committed by military personnel.

200. In combating impunity, the State has a legal duty to take all reasonable steps to prevent human rights violations; to conduct, using the means available to it, thorough investigations of violations committed within its jurisdiction in order to identify the perpetrators; to punish them accordingly; and to ensure that the victims receive appropriate compensation (see para. 93).

201. Moreover, impunity in Guatemala is a phenomenon which goes beyond the human rights sphere and affects other aspects of national life. The Mission is

equally concerned at the impunity enjoyed by ordinary criminals, which creates a feeling of defencelessness among Guatemalan society and undermines basic values such as public safety, the concept of justice and equality before the law. It should also be pointed out that everyone living in Guatemala has the fundamental right to be able to live a life free from fear and disruption and to be safe from attacks on his or her life, integrity, safety and freedom.

202. The State must identify and tackle the root causes of impunity in order to eliminate it. The Mission, taking into account the evidence uncovered in the course of its verification, wishes to stress, inter alia, the following elements:

(a) The defective functioning of the administration of justice, of the Public Prosecutor's Office and of the security forces responsible for preventing and punishing crime, which is attributable to a variety of interrelated reasons;

(b) The existence of illicit associations linked with drug trafficking, car theft and timber smuggling and with financial or other interests which may enjoy the support, the complicity or the tolerance of State agents;

(c) The autonomy enjoyed by the army in its counter-insurgency and anti-subversive activities and also the procedures it uses in this sphere and the broad interpretation it gives to those concepts;

(d) The control exerted over rural communities by military commissioners and CVDCs;

(e) The proliferation of and lack of control over individual possession of firearms in the possession of private individuals.

203. The Mission recommends to the Government as a matter of high priority that it should make resolute efforts to put an end to the impunity enjoyed by the perpetrators of both human rights violations and ordinary crimes. The rapid settlement of pending criminal cases in accordance with the principles of due process will help to inspire confidence in the administration of justice. Such confidence will help Guatemalan society to overcome the widespread feeling of defencelessness which is prevalent today. In this connection, the President of the Republic has reassured the Mission of his deep concern and his commitment to combating impunity.

Role of the Mission

204. In its efforts to help improve the human rights situation in Guatemala, MINUGUA has benefited from United Nations experience in the field of human rights, particularly that acquired in Latin America. MINUGUA can contribute to improving the situation described in this report in three ways: (a) through its permanent presence on the ground, which gives it direct access to the human rights situation in the country and, in turn confidence among the population as to what can be done; (b) through its verification work, which directly or indirectly strengthens the administration of justice and which, as the parties fulfil their commitments under the Agreement, will enhance the credibility of the peace process; (c) through its strengthening of the institutions responsible

for the promotion and observance of human rights, which will contribute to the comprehensive functioning of the rule of law in Guatemala.

205. The Mission reiterates its gratitude to the members of the international community for their willingness to provide diplomatic, political and financial support for the peace process in Guatemala through MINUGUA. It also recalls General Assembly resolution 48/267, which invites the international community to support institution-building and cooperation projects which could be implemented by the Mission and the relevant Guatemalan institutions with the participation of United Nations organizations and programmes.

206. The effective fulfilment of the Mission's mandate in the areas of both verification and institution-building will take a reasonable amount of time. However, in many different sectors of Guatemalan society there is already a feeling that MINUGUA is doing work that is beneficial to the country. There is also an expectation that the Mission will be able to continue to promote efforts to ensure human rights, peace and national reconciliation.

Notes

1/ E/CN.4/1995/15.

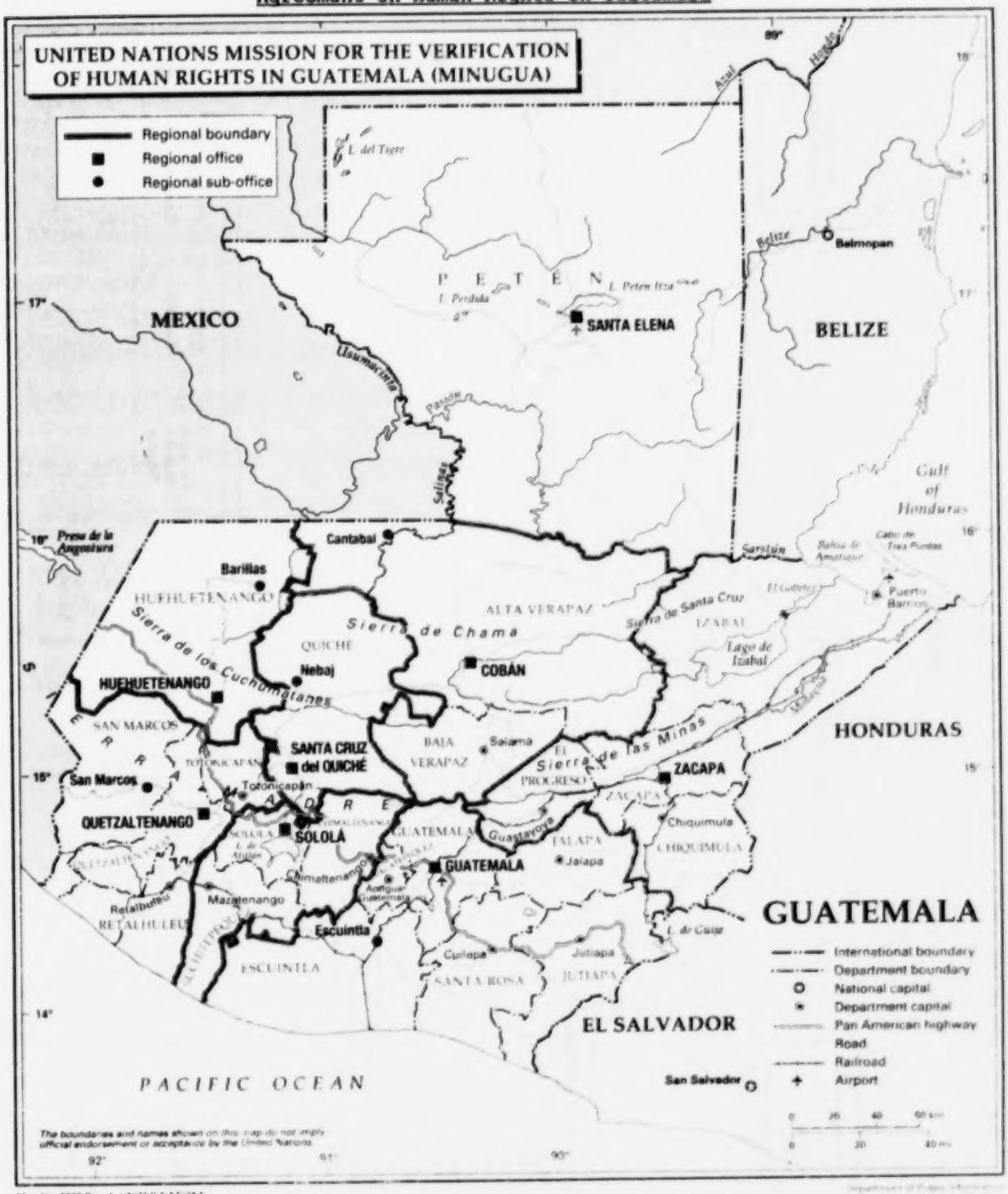
2/ The study, which was conducted following a request by the Government of Guatemala, was carried out from 24 October to 4 November 1994 by police experts from El Salvador, Norway, Spain, Sweden and the United States of America.

3/ Centro Exterior de Reportes Informativos sobre Guatemala.

4/ Report of the World Conference on Human Rights, Vienna, 14-25 June 1993 (A/CONF.157/24 (Part I)), chap I, para. 38.

APPENDIX I

United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala



Map No. 3839 Rev. 1 UNITED NATIONS
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APPENDIX II

Organizational chart